

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

BRUCE BIRCH,

v.

PAMELA DEL PORTO

Plaintiff,

Defendant.

Case No. 3:19-cv-00043-MMD-CLB

ORDER

On January 30, 2019, Plaintiff Bruce Birch, then a prisoner in custody of the Nevada Department of Corrections (“NDOC”), initiated this prisoner civil rights action under 42 U.S.C. § 1983. (ECF No. 1-1.) On December 12, 2019, the Court issued a screening order and stayed the case to give the parties an opportunity to settle their dispute. (ECF No. 30.) The parties were unable to reach an agreement, and the case proceeded until Defendant Pamela Del Porto moved for summary judgment. (ECF No. 93.) Magistrate Judge Carla L. Baldwin issued a Report and Recommendation that Defendant’s Motion be granted. (ECF No. 139.) On January 12, 2021, Defendant filed a suggestion of death on the record. (ECF No. 150.)

Pursuant to Federal Rule of Civil Procedure 25(a)(1), “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Fed. R. Civ. P. 25(a)(1). As such, if there is no motion for substitution within 90 days of the date of this order, the Court will dismiss the case.

In the meantime, the Court denies all pending motions (ECF Nos. 93, 146, 149) as moot and overrules Magistrate Judge Baldwin’s Report and Recommendation (ECF No.

1 139) as moot with leave for the moving party to request reinstatement of their motion
2 within seven days from the Court's order granting any motion to substitute the proper
3 party.

4 DATED THIS 13th Day of January 2021.

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7 MIRANDA M. DU
8 CHIEF UNITED STATES DISTRICT JUDGE
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